(3)

No. 90-1712

Supreme Court, U.S.
FILED
OCT 3 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1991

STATE OF NORTH CAROLINA, PETITIONER

v.

CARLTON J. SMITH

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

KATHLEEN A. FELTON
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the State of North Carolina has jurisdiction to prosecute respondent as an adult for crimes he allegedly committed when he was a juvenile at Camp Lejeune, a federal military installation over which the United States has exclusive legislative jurisdiction.

TABLE OF CONTENTS

	Page
Statement	1
Argument	7
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Ableman v. *Booth*, 62 U.S. (21 How.) 506 (1859)	14
Battle v. *Johnson*, 209 U.S. 36 (1908)	8
Benson v. *United States*, 146 U.S. 325 (1892)	5
Black v. *Cutter Laboratories*, 351 U.S. 292 (1956)	15
Board of Freeholders v. *McCorkle*, 98 N.J. Super. 451, 237 A.2d 640 (1968)	11
Bowen v. *Johnston*, 306 U.S. 19 (1939)	5, 8
California v. *Rooney*, 483 U.S. 307 (1987)	15
Cobb v. *Cobb*, 406 Mass. 21, 545 N.E.2d 1161 (1989)	11
D.C. Court of Appeals v. *Feldman*, 460 U.S. 462 (1983)	14-15
Evans v. *Cornman*, 398 U.S. 419 (1970)	11
Goodyear Atomic Corp. v. *Miller*, 486 U.S. 174 (1988)	12
Howard v. *Commissioners*, 344 U.S. 624 (1953)	12
James B. Stewart & Co. v. *Sadrakula*, 309 U.S. 94 (1940)	12
Martin v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816)	14
People of Puerto Rico v. *Koedel*, 927 F.2d 662 (1st Cir. 1991)	8
Rooker v. *Fidelity Trust Co.*, 263 U.S. 413 (1923)	15
Solem v. *Bartlett*, 465 U.S. 463 (1984)	14
State in Interest of D.B.S., 137 N.J. Super. 371, 349 A.2d 105 (1975)	11
State v. *DeBerry*, 224 N.C. 834, 32 S.E.2d 617 (1945)	5, 7, 15
State v. *Stokes*, 319 N.C. 1, 352 S.E.2d 653 (1987)	5
Stedman, In re, 305 N.C. 92, 286 S.E.2d 527 (1982)	5

Cases—Continued: Page

Surplus Trading Co. v. *Cook*, 281 U.S. 647 (1930) .. 8
Tafflin v. *Levitt*, 493 U.S. 455 (1990) 14, 15
Terry Y, In re, 101 Cal. App. 3d 178, 161 Cal. Rptr. 452 (1980) 11
United States v. *C.G.*, 736 F.2d 1474 (11th Cir. 1984) 13
United States v. *John*, 437 U.S. 634 (1978) 8
United States v. *Juvenile Male*, 819 F.2d 468 (4th Cir. 1987) 4
United States v. *Juvenile Male*, 939 F.2d 321 (6th Cir. 1991) 10
United States v. *Smith*, 675 F. Supp. 307 (E.D.N.C. 1987), rev'd, 851 F.2d 706 (4th Cir. 1988) 3, 4
United States v. *Unzeuta*, 281 U.S. 138 (1930) 5, 8
United States v. *Vancier*, 515 F.2d 1378 (2d Cir.), cert. denied, 423 U.S. 857 (1975) 13
Washington v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979) 14
Western Union Tel. Co. v. *Chiles*, 214 U.S. 274 (1909) 8
Williams v. *United States*, 327 U.S. 711 (1946) 8

Constitution, statutes and regulation:

U.S. Const.:
Art. I, § 8, Cl. 17 ..... 2, 5, 7-8
Art. I, § 9, Cl. 3 (Ex Post Facto Clause) 4, 16
Amend XIV (Equal Protection Clause) 11
Act of Oct. 12, 1984, Pub. L. No. 98-473, Tit. II, § 1201(b)(2), 98 Stat. 2150 4
Assimilative Crimes Act, 18 U.S.C. 13 12
Buck Act, 4 U.S.C. 105-110 12
Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq.*:
18 U.S.C. 5032 (1982) 4
18 U.S.C. 5032 ..... 3, 4, 6, 10, 13
Major Crimes Act, 18 U.S.C. 1153 8
10 U.S.C. 2683 11
16 U.S.C. 1a-3 11

Statutes and regulation—Continued: Page

18 U.S.C. 1152 8
40 U.S.C. 290 12
N.C. Gen. Stat. (1989):
§ 7A-517(20) 5
§ 7A-524 5
§ 7A-608 5
§ 104-7 (1985) 2, 6, 7
Army Reg. 608-18, *The Army Family Advocacy Program* (Sept. 18, 1987) 11

Miscellaneous:

Department of the Army, *Administrative and Civil Law Handbook* (Pamphlet 27-21, Sept. 18, 1990) 11
Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, *Jurisdiction Over Federal Areas Within the States* Pt. 2 (1957) 8, 11, 12

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1712

STATE OF NORTH CAROLINA, PETITIONER

v.

CARLTON J. SMITH

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to file a brief expressing the views of the United States.

STATEMENT

1. On the morning of August 24, 1981, on the United States Marine Corps Base at Camp Lejeune, North Carolina, the bodies of respondent's aunt, cousin, and sister were found in the house where respondent lived. All three had been murdered. Respondent, who was 15 years old at the time, became a suspect. Pet. App. A1, A12, A40, A41-A42.

The portion of Camp Lejeune where the murders were committed, known as Area C, was acquired by the United States in 1941. Pet. App. A35-A36, A39; Pet. 5. In that year, Acting Secretary of the Navy Forrestal accepted jurisdiction over the area on behalf of the United States "in the manner and form provided by an Act of

1907, Ch. 25, N.C. Code 1927, Sec. 8059." Pet. App. A1, A38. The cited state statute, now codified at N.C. Gen. Stat. § 104-7 (1985) (see Pet. 4-5), provides that the consent of the State is given, in accordance with Article I, Section 8, Clause 17 of the United States Constitution,[1] to the acquisition by the United States of any land in the State required for courthouses, post offices, arsenals, or any other purposes of the government, and that "[e]xclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes," except service of civil or criminal process of the state courts.

On the day the murders occurred, the U.S. Attorney's office contacted the state district attorney's office to determine its position on the question of federal or state jurisdiction. In a letter of the same date, an assistant district attorney informed the U.S. Attorney's office that it had always been his understanding that criminal offenses occurring on Camp Lejeune "fall exclusively within the federal jurisdiction," but that "[e]ven assuming concurrent jurisdiction exists," the district attorney's office would defer to federal authorities in the case. Pet. App. A40.

The Naval Investigative Service (NIS) was unable to obtain sufficient evidence to bring charges against respondent in 1981. Respondent and his family left Camp Lejeune some time later, and they ultimately moved to

---

[1] Article I, Section 8, Clause 17 of the Constitution provides that the Congress shall have power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

Oregon. In 1986 respondent attempted to enlist in the Oregon National Guard. A background investigation disclosed that the murder investigation was still pending. As a result, respondent was not allowed to join the National Guard. Respondent's mother then contacted officials at Camp Lejeune and requested that they close the investigation. NIS agents thereafter conducted several interviews with respondent and members of his family. During one such interview, respondent made an incriminating statement. He was immediately arrested. See *United States* v. *Smith*, 675 F. Supp. 307, 308-309 (E.D. N.C. 1987), rev'd, 851 F.2d 706 (4th Cir. 1988).

2. On July 8, 1986, federal authorities filed a juvenile information in the United States District Court for the Eastern District of North Carolina charging respondent with three counts of premeditated murder. Pet. App. A41-A42. Pursuant to the Juvenile Delinquency Act, 18 U.S.C. 5032,[2] the United States filed with the information a certification that "no juvenile court or other appropriate court of any state, including the General Court of Justice of the State of North Carolina, has jurisdiction over said juvenile with respect to the acts of juvenile delinquency alleged in this case, such acts having oc-

---

[2] Section 5032 provides in relevant part:

> A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony [or one of certain enumerated offenses] and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

curred on Marine Corps Base, Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof." Pet. App. A43.

The district court subsequently granted the government's motion under 18 U.S.C. 5032 to have respondent stand trial as an adult. Pet. App. A20. The court of appeals, however, reversed. It held that the Ex Post Facto Clause of the Constitution (Art. I, § 9, Cl. 3) barred application to respondent of the 1984 amendment to 18 U.S.C. 5032 that permits trial as an adult for a juvenile charged with committing an offense after his fifteenth birthday.[3] *United States* v. *Juvenile Male*, 819 F.2d 468, 470-472 (4th Cir. 1987).

Respondent turned 21 while his appeal was pending. Accordingly, on July 6, 1987, after the Fourth Circuit rendered its decision, the government sought and was granted leave to dismiss the juvenile information. Pet. App. A21. On July 8, 1987, a federal grand jury returned an indictment charging respondent, as an adult, with three counts of first-degree murder. Respondent moved to dismiss the murder counts on the ground that he could not be prosecuted as an adult after having been proceeded against as a juvenile under the Juvenile Delinquency Act. The district court denied the motion. *Id.* at A22; *United States* v. *Smith*, 675 F. Supp. 307 (E.D. N.C. 1987). The court of appeals reversed, holding that under 18 U.S.C. 5032, the filing of juvenile proceedings acted as a bar to the subsequent institution of criminal charges against respondent, even after he turned 21. *United States* v. *Smith*, 851 F.2d 706 (4th Cir. 1988).

3. On December 13, 1988, after the Fourth Circuit's decision ordering dismissal of the federal murder prosecution, a state grand jury in Onslow County, North Carolina, returned an indictment charging respondent

---

[3] Act of Oct. 12, 1984, Pub. L. No. 98-473, Tit. II, § 1201(b)(2), 98 Stat. 2150. Prior to the amendment, the minimum age for transfer for trial as an adult was 16. 18 U.S.C. 5032 (1982).

with three counts of murder under state law based on the events of August 24, 1981. The Superior Court denied respondent's motion to dismiss the indictment. It held that the United States did not acquire exclusive jurisdiction over juvenile delinquency matters at Camp Lejeune and that the State retained jurisdiction over such matters. Pet. App. A25-A31. The court further ruled, on the basis of *In re Stedman*, 305 N.C. 92, 105, 286 S.E.2d 527, 534-535 (1982), that the state courts no longer had juvenile jurisdiction over respondent, because such jurisdiction terminates when the individual reaches his eighteenth birthday (see N.C. Gen. Stat. §§ 7A-517(20), 7A-524 (1989)) and respondent was by then more than 22 years of age, but that the Superior Court did have jurisdiction to try respondent as an adult. Pet. App. A30.[4]

4. The North Carolina Supreme Court reversed, holding that the United States has exclusive jurisdiction over Camp Lejeune and that the state court therefore lacked jurisdiction to prosecute respondent. Pet. App. A1-A11. The North Carolina Supreme Court pointed out that it, as well as this Court, had previously concluded that when the United States acquires exclusive jurisdiction over an area pursuant to Article I, Section 8, Clause 17 of the Constitution, the State does not have jurisdiction to prosecute a criminal offense occurring on the enclave. Pet. App. A6-A7.[5]

---

[4] Respondent would have been tried as an adult under state law even if the state court had obtained jurisdiction over him prior to his eighteenth birthday. Under North Carolina law, the juvenile court may transfer jurisdiction over a juvenile 14 years of age or older to the superior court if the juvenile was 14 or older when he allegedly committed an offense that would be a felony if committed by an adult, and the court *must* transfer jurisdiction if the alleged felony is a capital offense. N.C. Gen. Stat. § 7A-608 (1989); see *State* v. *Stokes*, 319 N.C. 1, 12, 352 S.E.2d 653, 659 (1987).

[5] The Court cited *United States* v. *Unzeuta*, 281 U.S. 138 (1930); *Bowen* v. *Johnston*, 306 U.S. 19 (1939); *Benson* v. *United States*, 146 U.S. 325 (1892); and *State* v. *DeBerry*, 224 N.C. 834, 32 S.E.2d 617 (1945).

The State conceded that it normally would not have jurisdiction over criminal matters on Camp Lejeune. Pet. App. A8. But the State contended that it has jurisdiction in this case because a juvenile delinquency proceeding is civil in nature and because state civil laws in existence at the time of cession are deemed to continue in effect until abrogated by federal authority. *Id.* at A7. The State further contended that the federal Juvenile Delinquency Act, 18 U.S.C. 5032, embodies a specific congressional determination that the States are better able to deal with juvenile delinquency problems than federal authorities.

The North Carolina Supreme Court found the State's reliance on 18 U.S.C. 5032 misplaced, because Section 5032 does not require deference to state procedures where the Attorney General certifies that state courts do not have jurisdiction, and here the U.S. Attorney made such a certification to the federal district court. Pet. App. A8-A9. The court also rejected the State's contention that the federal government never accepted jurisdiction over juvenile delinquency matters on Camp Lejeune. *Id.* at A7, A9-A10. It explained that Acting Secretary of the Navy Forrestal expressly accepted jurisdiction in 1941 in the manner provided by the 1907 North Carolina statute, now codified at N.C. Gen. Stat. § 104-7 (1985), which cedes "[e]xclusive jurisdiction" to the United States "for all purposes" except service of process. Pet. App. A10. The court was unpersuaded by the State's suggestion that Acting Secretary Forrestal could not have anticipated "the many complexities of jurisdictional law that would arise in the future." *Ibid.* In its view, the Acting Secretary had "accepted exclusive jurisdiction as completely as he could," and it noted that both the state and federal governments had laws applicable to juvenile delinquency at the time of the 1941 cession. *Ibid.*

Finally, the North Carolina Supreme Court rejected the State's contention that federal and state courts have concurrent jurisdiction over this case on the rationale that

a juvenile delinquency hearing is a civil matter in both the federal and state court systems. The court concluded that it was not necessary to decide whether state juvenile delinquency proceedings are civil or criminal for these purposes, because "[i]n this case the proceedings against [respondent] in the Superior Court, Onslow County are criminal proceedings. His case was transferred to superior court on three charges of murder." Pet. App. A11. Since this case is an ordinary criminal prosecution, not a juvenile delinquency proceeding, the court held that the jurisdiction of the United States is exclusive. To hold otherwise, the court concluded, would require it to overrule its prior decision in *State* v. *DeBerry*, 224 N.C. 834, 32 S.E.2d 617 (1945), which held that the State may not prosecute an offense occurring on a federal enclave as to which the State has ceded exclusive jurisdiction. Pet. App. A7, A11.

DISCUSSION

The North Carolina Supreme Court was correct in holding that the State does not have jurisdiction to prosecute respondent for the murders he allegedly committed on Camp Lejeune. That decision does not conflict with the decision of any other court and presents no question of general importance warranting review by this Court. Accordingly, although we are reluctant to conclude that serious charges of this nature must be dismissed without a trial on the merits in either federal or state court, we believe that the petition for a writ of certiorari should be denied.

1. a. The United States acquired jurisdiction over the portion of the Camp at issue here in 1941, in accordance with a North Carolina statute that ceded "[e]xclusive jurisdiction" to the United States "for all purposes," except service of process. N.C. Gen. Stat. § 104-7 (1985). The State does not dispute that, as a result, Camp Lejeune is an exclusive federal enclave within the meaning of Article I, Section 8, Clause 17 of the Consti-

tution and that established principles governing such enclaves are applicable here. See Pet. 11.

It is firmly established that the United States alone has jurisdiction to prosecute criminal offenses committed on an exclusive federal enclave. Whatever may be the interrelationship between state and federal law on such enclaves in other contexts, exclusive federal criminal jurisdiction has long been at the very core of their unique status. *United States* v. *Unzeuta*, 281 U.S. 138 (1930); *Bowen* v. *Johnston*, 306 U.S. 19, 29-30 (1939); see also *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 652-655 (1930); *Western Union Tel. Co.* v. *Chiles*, 214 U.S. 274, 278 (1909); *Battle* v. *Johnson*, 209 U.S. 36, 37 (1908); *People of Puerto Rico* v. *Koedel*, 927 F.2d 662, 664-667 (1st Cir. 1991);[6] see generally Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, *Jurisdiction Over Federal Areas Within the States* Pt. 2, at 105-109 (1957). It follows that the State of North Carolina does not have jurisdiction to prosecute respondent for murders committed on Camp Lejeune.

The State acknowledges (Pet. 11) that "an otherwise plenary cession of jurisdiction to the federal government does not implicitly reserve state criminal jurisdiction," because the purpose of Article I, Section 8, Clause 17 of the Constitution is to enable Congress "to exercise direct and plenary sovereignty" over federal enclaves and because "the enforcement of the criminal law is one of the highest attributes of sovereignty." The State therefore "does not question the general rule upheld in cases such as *Bowen* and *Unzeuta*" that the United States alone has criminal jurisdiction over such enclaves. Pet.

---

[6] Cf. *United States* v. *John*, 437 U.S. 634, 651 (1978) (federal jurisdiction over prosecution of Indian under Major Crimes Act, 18 U.S.C. 1153, is exclusive of state jurisdiction); *Williams* v. *United States*, 327 U.S. 711, 714 (1946) (federal courts have exclusive jurisdiction under what is now 18 U.S.C. 1152 over crime committed by non-Indian against Indian in Indian country).

11-12; see also Pet. 15. The State does contend (Pet. 12-15), however, that it has jurisdiction to conduct juvenile delinquency proceedings with respect to acts committed on Camp Lejeune because such proceedings are "civil" in nature and because, in its view, North Carolina laws on the subject remained in effect after the cession to the United States.

That issue is not presented here, because the State is not proceeding against respondent as a juvenile. The Superior Court held (Pet. App. A30), and the State does not dispute, that the state courts do not have juvenile jurisdiction over respondent even as a matter of state law, because he is now more than 25 years old. Rather, the State is proceeding against respondent as an adult, invoking its ordinary criminal jurisdiction to prosecute him for murder, which is a capital offense under state law. See note 4, *supra*. Such a prosecution is not civil in nature.

Nor can state jurisdiction be justified on the rationale that the State's jurisdiction over respondent "has its origin in juvenile law" and that "[o]nce jurisdiction attaches, as it did in 1981, it continues to exist notwithstanding the fact that the respondent is no longer a juvenile." Pet. 15. We may assume, *arguendo*, that while respondent remained a juvenile within the meaning of state law, the State would have had jurisdiction to adjudicate him a delinquent and to make a non-criminal disposition of his case, on the State's theory that such a "civil" proceeding is not barred by the United States' acquisition of exclusive jurisdiction over Camp Lejeune. But the State would not have had jurisdiction to bring an ordinary criminal prosecution against respondent even while he was a juvenile, since the prosecution would not have been a "civil" case over which the State had, by hypothesis, retained jurisdiction.[7] It follows *a fortiori* that the State may not

[7] We do not agree with the State's apparent contention (Pet. 15) that the federal Juvenile Delinquency Act's policy of deferral to the States carves out an implied exception to the rule of exclusive

bring a criminal prosecution against respondent now that he is no longer subject to state juvenile jurisdiction.

b. The State does not cite any other case involving the exercise of state criminal jurisdiction over an offense committed by a juvenile on an exclusive federal enclave, and we are aware of none. Moreover, the decision below does not, in our view, introduce problems of law enforcement on federal enclaves. When a person has allegedly committed a serious crime of violence as a juvenile and an ordinary criminal prosecution is warranted and permitted by federal law, the matter falls within the normal responsibilities of the U.S. Attorney and the jurisdiction of the federal criminal justice system. In fact, the federal Juvenile Delinquency Act, as amended in 1984, does not require deferral to state authority even outside an exclusive enclave when the Attorney General certifies that the offense is a crime of violence and that there is a substantial federal interest in the case or offense warranting the exercise of federal jurisdiction. 18 U.S.C. 5032. Thus, the decision below does not disrupt established jurisdictional arrangements.

---

federal jurisdiction over ordinary criminal prosecutions arising on a federal enclave. The policy of deferral to state courts focuses on (and is triggered by) the existence and suitability of state juvenile jurisdiction and programs. That is evident from the provision in 18 U.S.C. 5032 that a juvenile alleged to have committed an act of juvenile delinquency may be proceeded against in federal court if the Attorney General certifies that "the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such act of juvenile delinquency," or that "the State does not have available programs and services adequate for the needs of juveniles."

Moreover, because the first portion of 18 U.S.C. 5032 quoted above expressly contemplates that there will be situations in which a State does not have juvenile jurisdiction, the Juvenile Delinquency Act does not by its terms furnish a basis for recognizing the right of a State to exercise even juvenile jurisdiction on an exclusive enclave. See *United States* v. *Juvenile Male*, 939 F.2d 321, 323-324 (6th Cir. 1991). But the Act of course does not foreclose any other available sources of state jurisdiction.

We have been informed in our consultations with departments having jurisdiction over exclusive federal enclaves that in many instances the responsible military commanders and civilian officials would prefer to have state courts and agencies exercise authority over routine juvenile delinquency problems (and domestic relations and similar matters) that arise on or concern residents of the enclave. The State typically has established institutions and experienced personnel to address those issues on a comprehensive basis, and there often is no comparable federal capability. For that reason, the federal government often would be prepared to retrocede jurisdiction to the States if necessary to facilitate state cooperation on these matters (see, *e.g.*, 10 U.S.C. 2683; 16 U.S.C. 1a-3) and has in the past supported the exercise of such state authority in certain circumstances even in the absence of a formal retrocession.[8] But in this case the North Carolina Supreme Court expressly declined to

---

[8] See, *e.g.*, *State in Interest of D.B.S.*, 137 N.J. Super. 371, 349 A.2d 105 (1975) (sustaining state juvenile jurisdiction over resident of Fort Dix where base authorities filed petition in state court); *In re Terry Y*, 101 Cal. App. 3d 178, 161 Cal. Rptr. 452 (1980) (state court exercises jurisdiction, at request of base authorities, over abused child residing at Fort Ord); *Cobb* v. *Cobb*, 406 Mass. 21, 545 N.E.2d 1161 (1989) (holding, supported by United States as amicus curiae, that state court may issue spousal abuse prevention order at request of enclave resident); *Board of Freeholders* v. *McCorkle*, 98 N.J. Super. 451, 237 A.2d 640 (1968) (holding, supported by United States as amicus curiae, that state laws relating to welfare services for children and commitment of mentally ill persons apply to enclave residents). Moreover, residents of exclusive federal enclaves frequently resort to state courts for divorce, probate, or other purposes (see *Jurisdiction Over Federal Areas supra*, Pt. 2, at 8, 215-238) and receive state welfare, education and other benefits. See, *e.g.*, *Evans* v. *Cornman*, 398 U.S. 419 (1970) (Equal Protection Clause prevents State from denying enclave residents right to vote); see generally Department of the Army, *Administrative and Civil Law Handbook* 24-37 (Pamphlet 27-21, Sept. 18, 1990); Army Reg. 608-18, *The Army Family Advocacy Program* (Sept. 18, 1987), Apps. B, C.

reach any broader questions concerning a State's exercise of traditional juvenile jurisdiction on an exclusive federal enclave. Pet. App. A11. There accordingly is no occasion for this Court to consider those questions.[9]

2. The State asks this Court to consider whether the state courts were bound by the U.S. Attorney's certification to the federal district court under the federal Juvenile Delinquency Act that the state courts did not have juvenile jurisdiction over respondent's conduct. See Pet. 16-17. That issue does not warrant review.

---

[9] We do note, however, that this Court's cases to date do not establish that a State may exercise juvenile jurisdiction on an exclusive federal enclave. In *Howard* v. *Commissioners*, 344 U.S. 624, 626-627 (1953), cited by the State (Pet. 12), the Court held that a city was not barred from annexing an area located within an enclave. That holding did not resolve any questions concerning what jurisdiction the city could exercise over the area as a result, or suggest that the only inquiry in any case involving state civil jurisdiction is whether it interferes with federal authority; such a test would accord no significance to the exclusive nature of the enclave. In fact, the Court in *Howard* sustained application of the challenged city tax on the enclave only because it was authorized by the Buck Act, 4 U.S.C. 105-110. 344 U.S. at 627-629.

The State also relies (Pet. 12) on the proposition that state civil laws in effect at the time of cession remain in effect on the enclave until displaced by federal legislation. But it appears that state civil law is carried forward as *federal* law in the enclave. See *James B. Stewart & Co.* v. *Sadrakula*, 309 U.S. 94, 100 (1940) (this principle "assimilate[s] the laws of the federal territory, where the Congress has not legislated otherwise, to the laws of the surrounding state"); *Jurisdiction Over Federal Areas, supra*, Pt. 2, at 158 ("The rule serves to federalize not only the statutory but the common law of a State."); compare 18 U.S.C. 13 (Assimilative Crimes Act). Moreover, state laws that are implemented through a state administrative agency have generally been thought to be inapplicable on the enclave (*Jurisdiction Over Federal Areas, supra*, Pt. 2, at 161-162, 183-184; *Stewart & Co.*, 309 U.S. at 102), in the absence of a retrocession to the State, as in the case of state workers' compensation laws permitted by 40 U.S.C. 290. See *Jurisdiction Over Federal Areas, supra*, Pt. 2, at 207-210; *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 182-184 & n.4 (1988); *id.* at 193-194 (White, J., dissenting).

a. As the North Carolina Supreme Court pointed out, the Second Circuit held in *United States* v. *Vancier*, 515 F.2d 1378, cert. denied, 423 U.S. 857 (1975), that at least in the absence of bad faith, the *federal* courts are bound by the U.S. Attorney's certification that the state court does not have or will not exercise jurisdiction. See also *United States* v. *C.G.*, 736 F.2d 1474, 1477-1478 (11th Cir. 1984); compare *United States* v. *Juvenile Male*, 923 F.2d 614, 616-618 (8th Cir. 1991). We agree with the State that the *state* courts are not similarly bound by such a certification. But the North Carolina Supreme Court did not hold otherwise. It discussed the U.S. Attorney's certification only in response to the State's argument that the States are better able to deal with juvenile delinquency problems and that Section 5032 reflects a congressional intent to defer to state jurisdiction. Pet. App. A9. To be sure, it is not entirely clear what the state court meant when it wrote: "If we must accept the United States Attorney's certification as final that the courts of this state do not have jurisdiction, then 18 U.S.C. § 5032 is not helpful to the State." *Ibid.* But the court did not say that it actually was required to accept the certification. Moreover, the court independently examined the governing jurisdictional principles (*id.* at A6-A7, A9-A11) and held that the state courts do not have jurisdiction here for the distinct reason that the State is proceeding against respondent as an adult, in an ordinary criminal prosecution. *Id.* at A11. The decision below therefore does not rest on any issue concerning the U.S. Attorney's certification.

The question of the effect of the certification on subsequent proceedings in state court is not in any event one of general importance warranting review by this Court. We are aware of no other cases raising the issue, and in light of the fact that such a certification is ordinarily filed only after consultation with state authorities, the issue is unlikely to arise frequently.

b. In a related vein, the State objects (Pet. 18-19) to one sentence in the last paragraph of the opinion below, which states: "Bound as we are by the federal court's interpretation of this federal question, we must hold that the Superior Court, Onslow County does not have jurisdiction to try the defendant." Pet. App. A11. The State apparently reads this sentence as an indication that the North Carolina Supreme Court believed that it was bound by the Second Circuit's holding in *Vancier* that the U.S. Attorney's certification is binding. See Pet. 18-19. But the North Carolina Supreme Court did not identify *Vancier* as the "interpretation" by a "federal court" to which it was referring. In any event, we would not readily infer that the North Carolina Supreme Court believed that it was obligated to follow a single federal court of appeals for a circuit that does not even embrace North Carolina, and *Vancier* did not address the question of whether a state court is bound by the U.S. Attorney's certification.

We of course agree with the State (Pet. 19 n.7) that a state court is not ordinarily bound in any formal sense by the interpretation given to a federal law by an inferior federal court. The Constitution and relevant statutes contemplate that state courts may exercise independent judgment in interpreting federal laws, subject to review by this Court where Congress has provided, and that conflicts among state and federal courts on questions of federal law may and will arise. See *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 341-348 (1816); *Ableman* v. *Booth*, 62 U.S. (21 How.) 506, 517-520 (1859); *Tafflin* v. *Levitt*, 493 U.S. 455, 464-467 (1990).[10] Because the decisions of state courts may not be reviewed by inferior federal courts, *D.C. Court of Appeals* v. *Feldman*, 460

---

[10] See, *e.g.*, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 672 n.19 (1979); *Solem* v. *Bartlett*, 465 U.S. 463, 466 (1984).

U.S. 462, 476 (1983); *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 415-416 (1923), it would make no sense for state courts to be obligated to follow their decisions. However, it is entirely proper for a state court to be guided by and defer to the decisions of the lower federal courts if it finds them persuasive. See *Tafflin* v. *Levitt*, 493 U.S. at 465. That may be all the North Carolina Supreme Court meant to say.

Alternatively, the North Carolina Supreme Court may have meant to refer to the decisions of this Court. State courts properly regard themselves as bound by this Court's interpretations of federal law. In this regard, the opinion below discusses a number of this Court's decisions holding that state courts have no criminal jurisdiction over offenses arising in an exclusive federal enclave. Pet. App. A6-A7. Because the sentence in the opinion quoted above follows immediately after the court's holding that the North Carolina courts do not have jurisdiction to entertain an ordinary criminal prosecution against respondent, *id.* at A11, it may be that the North Carolina Supreme Court meant to refer to an "interpretation" of federal law announced by this Court.

Whatever the import of the ambiguous sentence in the opinion's closing paragraph, however, it presents no question of general importance that warrants certiorari. This Court reviews judgments, not statements in opinions. *Black* v. *Cutter Laboratories*, 351 U.S. 292, 297 (1956); see *California* v. *Rooney*, 483 U.S. 307, 311 (1987). It is clear that the judgment below is correct, and the portion of the opinion in question was not necessary to that judgment; the North Carolina Supreme Court pointed out that if it were to hold that the State *could* bring an ordinary criminal prosecution against respondent, it would have to overrule its own prior decision in *State* v. *DeBerry*, *supra*. Accordingly, dismissal of the state charges was required by the North Carolina Supreme Court's own precedent, irrespective of whatever a lower federal court

might once have said about federal questions that might have some relevance to this case.

3. Needless to say, we profoundly regret that the charges of murder at issue here must be dismissed without a trial on the merits in either federal or state court. In the federal system, that result was the product of prosecutorial and litigating decisions made at various stages of the case; the judgment by Congress as of 1981 not to permit trial of a juvenile as an adult for crimes he committed at age 15; and the interpretations of the Ex Post Facto Clause and the federal Juvenile Delinquency Act in the two Fourth Circuit rulings that effectively foreclosed a federal prosecution. In the state system, the dismissal of the charges was required by the allocation of jurisdiction that was made when the exclusive federal enclave was established in the State, with its consent, pursuant to the Constitution and statutes of the United States and North Carolina. Unless that jurisdictional regime is altered by Congress or by a retrocession of jurisdiction to the State under existing statutory authority, the creation of exclusive enclaves to further what the Framers, Congress, and responsible Executive Branch officials deemed to be important federal interests will, on occasion, lead to a result such as the one the North Carolina Supreme Court was required to reach here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

WILLIAM C. BRYSON
Deputy Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

KATHLEEN A. FELTON
Attorney

OCTOBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 45096